

**2008 Proposed Regulation Changes  
Responses to Comments  
January 14, 2008**

**Section 10302(nn)**

**Initial Proposed Change:**

- nn) Threshold Basis Limit. The aggregate limit on amounts of unadjusted eligible basis allowed by the Committee for purposes of calculating Tax Credit amounts. These limits are published by CTCAC in its Application Supplement, by unit size and project location, and are based upon average development costs reported within CTCAC applications and certified development cost reports. CTCAC staff shall use new construction cost data from both 9 percent and 4 percent funded projects, and shall eliminate extreme outliers from the calculation of averages. Staff shall publicly disclose the standard deviation percentage used in establishing the limits, and shall provide a worksheet for applicant use. CTCAC staff shall establish the limits in a manner that seeks to avoid a precipitous reduction in the volume of 9 percent projects awarded credits from year to year. ~~mortgage limits published by the U. S. Department of Housing and Urban Development for the 221(d)(3) program.~~ Local Development Impact Fees as defined in section 10302 of these regulations shall be excluded from this calculation if the fees are documented in the application submission by the entities charging such fee.

**Comments Received:**

Several comments included support for the data-based alternative to the 221(d)(3)-based limit system, understanding that it would be refined over time. One commenter commended the results, but urged TCAC to raise the per-project maximum credit amounts also.

A set of commenters requested a waiver of basis limits for 4 percent (4%) tax credit applications for public housing redevelopment projects. Specifically, a basis limit waiver would be available for public housing authority-proposals to redevelopment or replace public housing with a commitment of at least 25 percent (25%) of the units at 50% of AMI or below.

TCAC received numerous comments from developers and city officials regarding the impact of the proposed methodology change on the western portion of the Inland Empire geographic region. Specifically, commenters argued that a methodology that includes large, disparate real estate markets will harm developers in the higher-cost portions of the county. The communities in western San Bernardino and Riverside counties were cited as examples of such harmed communities. Commenters suggested either phasing in the change by permitting resubmitted unsuccessful applications from 2007 to use the current, 221(d)(3) limits if higher, or retaining the 10% high cost boost for the Inland Empire communities. Alternatively, commenters suggested dividing the large Inland Empire counties into eastern and western portions with separate limits for each.

Additional comments of concern were received from regions whose limits would decline relative to the 221(d)(3) elevator basis limits. Commenters urged TCAC to retain the 10 percent high cost area adjustment for 9% applications, and the 100% and 120% adjustments for 4% applications.

One commenter recommended using an earlier, square-footage expressed version of proposed basis limits. As an alternative, that commenter recommended using 900 square feet as the starting point for a two-bedroom unit calculation.

Commenters suggested making the underlying data available for public review and discussion prior to implementing the new limits. One commenter also expressed concern about aggregating very different project types into a single data set for establishing an average construction cost. This commenter and another suggested accounting for differences in the basis limit adjusting system.

A commenter recommended examining how our proposed changes affect the various regions before implementing, and several commenters suggested delaying the implementation of the new system or grandfathering in re-applying unsuccessful 2007 applications.

**Response:**

The comments received generally responded to the proposed limits that would result from the new system. Since June 2007, TCAC staff have been engaged in a very public process for deriving a data-based set of basis limits for counties throughout the state. The process has been iterative, and TCAC has benefited from a great deal of very helpful feedback. That process alone results in better public policy outcomes than the current 221(d)(3) system where figures are published without consultation by the federal Department of Housing and Urban Development (HUD), and adjusted without clear explanation by the regional HUD offices (hubs). The January 9, 2008 proposed limits tables published on TCAC's website, show 41 of 58 counties would have limits exceeding their current 221(d)(3) limits for properties with elevators. Seventeen (17) counties would have lower basis limits, generally by a small amount. The greatest benefit of the new system accrues to the high cost coastal areas of the state, and the San Francisco Bay area. These areas have been dramatically underserved by the current 221(d)(3) limits, and would now have limits more closely related to actual development costs in the area.

TCAC staff recommends going forward with the regulation change as originally proposed, and will continue working with stakeholders over time to derive accurate development cost estimates within regions.

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## Sections 10315(b)

### Initial Proposed Change:

#### Section 10315. Set-asides and Apportionments

- (a) Nonprofit set-aside. Ten percent (10%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects involving, over the entire restricted use period, Qualified Nonprofit Organizations as the only general partners and developers, as defined by these regulations, and in accordance with IRC Section (42)(h)(5).
- (b) ~~Each funding round, credits available in the Homeless assistance apportionment. In each reservation cycle, fifty percent (50%) of the Nonprofit set-aside shall be made available as a first-priority, to projects providing housing to homeless households at affordable rents, consistent with Section 10325(g)(4)(A) and (D) in the following priority order:~~
- First, projects with McKinney Act, ~~or State~~ Mental Health Services Act (MHSA), or State Supportive Housing Program Homelessness Initiative funding committed.
  - Second, projects with rental assistance funding commitments from federal, state, or local governmental funding sources. The rental assistance must be sponsor-based or project-based and the remaining term of the project-based assistance contract shall be no less than one (1) year and shall apply to no less than fifty percent (50%) of the units in the proposed project.
  - Other qualified homeless ~~apportionment~~ assistance projects.

~~To compete in this apportionment~~ as a homeless assistance project, at least fifty percent (50%) of the units within the project must house households:

- (1) Moving from an emergency shelter; or
- (2) Moving from transitional housing; or
- (3) Currently homeless which means:
  - (A) An individual who lacks a fixed, regular, and adequate nighttime residence; or
  - (B) An individual who has a primary nighttime residence that is:
    - (i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and Transitional Housing for the mentally ill); or
    - (ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

- (iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Any amount of Tax Credits ~~apportioned by this subsection and~~ not reserved for homeless assistance projects during a reservation cycle shall be available for other applications qualified under the Non-profit set-side.

### **Comments Received:**

Several commenters endorsed the proposed change to encourage homeless assistance.

Two commenters suggested that TCAC amend the funding priorities to (a) add “operating funding” to the second priority for homeless assistance, and one commenter suggested that TCAC (b) permit a “Letter of Intent” from a local government subsidy source since they may not be permitted to pre-commit funding from subsequent years’ budgets.

Commenters also suggested enlarging the Special Needs/SRO set-aside to accommodate (a) anticipated strong demand from SRO sponsors, and (b) for-profit sponsors who may wish to provide homeless assistance or special needs housing. One commenter suggested establishing a separate set-aside for homeless assistance that could be accessed by nonprofit or for-profit developers.

One commenter supported “any measure to increase the options for homeless housing in California,” but objected to homeless apportionment projects being the preemptive priority in the nonprofit set-aside.

One commenter commended establishing Mental Health Services Act (MHSA)-funded projects as a priority. However, that commenter noted a needed language clean-up in Section 10325(f)(8)(F) to accommodate the MHSA funding that may not be finally committed at the TCAC application stage.

One commenter urged TCAC to clarify that homeless assistance would not have any priority status in the Special Needs set-aside.

### **Response:**

TCAC staff recommends going forward with the proposed change, with the following modifications as suggested by commenters.

- Clarify that the second priority category for homeless assistance projects includes those with either rent- or operating-subsidies.
- Clarify that a letter of intent from the local ongoing subsidy source is sufficient.
- Provide an accommodation for MHSA funds anticipated but not yet awarded in this section and in Section 10325(f)(8)(F).

### **Revised Proposed Language:**

#### Section 10315. Set-asides and Apportionments

- (a) Nonprofit set-aside. Ten percent (10%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-

aside for projects involving, over the entire restricted use period, Qualified Nonprofit Organizations as the only general partners and developers, as defined by these regulations, and in accordance with IRC Section (42)(h)(5).

- (b) ~~Each funding round, credits available in the Homeless assistance apportionment. In each reservation cycle, fifty percent (50%) of the Nonprofit set-aside shall be made available as a first-priority, to projects providing housing to homeless households at affordable rents, consistent with Section 10325(g)(4)(A) and (D) in the following priority order:~~
- First, projects with McKinney Act, ~~or State Supportive Housing Program Homelessness Initiative~~ funding committed, or Mental Health Services Act (MHSA) funding committed or anticipated.
  - Second, projects with rental or operating assistance funding commitments from federal, state, or local governmental funding sources. The rental assistance must be sponsor-based or project-based and the remaining term of the project-based assistance contract shall be no less than one (1) year and shall apply to no less than fifty percent (50%) of the units in the proposed project. For local government funding sources, ongoing assistance may be in the form of a letter of intent from the governmental entity.
  - Other qualified homeless ~~apportionment~~ assistance projects.

~~To compete in this apportionment as a homeless assistance project,~~ at least fifty percent (50%) of the units within the project must house households:

- (1) Moving from an emergency shelter; or
- (2) Moving from transitional housing; or
- (3) Currently homeless which means:
  - (A) An individual who lacks a fixed, regular, and adequate nighttime residence; or
  - (B) An individual who has a primary nighttime residence that is:
    - (i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and Transitional Housing for the mentally ill); or
    - (ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or
    - (iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Any amount of Tax Credits ~~apportioned by this subsection and~~ not reserved for homeless assistance projects during a reservation cycle shall be available for other applications qualified under the Non-profit set-side.

## **Section 10315(g)**

### **Initial Proposed Change:**

- (g) Special Needs/SRO set-aside. In addition to the homeless assistance apportionment in subsection (b) above, two percent (2%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects that qualify as Special Needs or Single Room Occupancy projects pursuant to these regulations. Any proposed homeless assistance project that applies and is eligible under the ~~homeless assistance apportionment~~ Nonprofit Set Aside but is not funded, will be eligible to be considered under this Special Needs/SRO set-aside.

### **Comments Received:**

Two commenters caught a remaining reference to “the homeless assistance apportionment” in the first two lines of paragraph (g), and recommended deleting the reference.

### **Response:**

Go forward with proposed change and delete additional reference to homeless assistance apportionment.

### **Revised Proposed Language:**

- (g) Special Needs/SRO set-aside. ~~In addition to the homeless assistance apportionment in subsection (b) above, two~~ Two percent (2%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects that qualify as Special Needs or Single Room Occupancy projects pursuant to these regulations. Any proposed homeless assistance project that applies and is eligible under the ~~homeless assistance apportionment~~ Nonprofit Set Aside but is not funded, will be eligible to be considered under this Special Needs/SRO set-aside.
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## **Section 10315(k)**

### **Initial Proposed Change:**

- (k) Credit available for geographic apportionments. Geographic apportionments, as described in this Section, shall be determined prior to, and made available during each reservation cycle in the approximate percentages of the total Federal and State Credit Ceiling available pursuant to Subsection 10310(b), after the Supplemental Set-Aside has been deducted from the annual Credit Ceiling and the Set-Aside calculations for non-profit ~~homeless assistance~~, rural, and special needs/SRO have been made.

**Comments Received:**

One commenter strongly endorsed this change.

Two commenters urged TCAC to deduct all of the set-asides from the credits available for distribution among the geographic apportionments, arguing it would be most helpful to the regions with small allocations. The commenters' recommended change would include the at-risk and small develop set-asides.

One commenter endorsed the change, but urged that only homeless assistance projects draw from the nonprofit set-aside, and other non-homeless-assistance projects continue to draw from the regional apportionment where the project would be located.

**Response:**

Go forward with proposed change. Continuing to distinguish non-homeless assistance awards would add confusion and unpredictability to the award process.

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**Section 10322(f)****Initial Proposed Change:**

- (f) Application changes. An application may not be changed, nor may any additional information with respect to scoring or meeting the Basic or Additional Threshold Requirements be submitted subsequent to the application filing deadline, except as permitted by Section 10327(a). Any changes made by the Committee pursuant to Section 10327(a) shall never improve the score of the application as submitted, and may reduce the application's score and/or credit amount.

**Comments Received:**

A commenter endorsed this change.

One commenter asked for clarification as to how excessive application figures would be adjusted down.

**Response:** Go forward with the change.

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**Section 10322(h)(2)****Initial Proposed Change:**

- (2) The Application form. Completion of all applicable parts of Committee-provided application forms which shall include, but not be limited to:
- (A) General Application Information
- (i) Credit amounts requested
  - (ii) minimum set-aside election
  - (iii) application stage selection
  - (iv) set-aside selection

- (v) housing type
- (B) Applicant Information
  - (i) applicant role in ownership
  - (ii) applicant legal status
  - (iii) developer type
  - (iv) contact person
- (C) Development Team Information
- (D) Subject Property Information
- (E) Proposed Project Information
  - (i) project type
  - (ii) Credit type
  - (iii) building and unit types
- (F) Land Use Approvals
- (G) Development Timetable
- (H) Identification and Commitment Status of Fund Sources
- (I) Identification of Fund Uses
- (J) Calculation of Eligible, Qualified and Requested Basis
- (K) Syndication Cost Description
- ~~(L) Syndicator Contacts~~
- ~~(ML)~~ Determination of Credit Need and Maximum Credit Allowable
- ~~(NM)~~ Project Income Determination
- ~~(ON)~~ Restricted Residential Rent and Income Proposal
- ~~(PO)~~ Subsidy Information
- ~~(QP)~~ Operating Expense Information
- ~~(RQ)~~ Projected Cash Flow Calculation
- ~~(SR)~~ Basic Threshold Compliance Summary
- ~~(TS)~~ Additional Threshold Selection
- ~~(UT)~~ Tax-exempt Financing Information
- ~~(VU)~~ Market Study

**Comments Received:** None received.

**Response:** Go forward with the proposed change.

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## Section 10322(k)

### Initial Proposed Change:

- (k) Applicants for nine percent (9%) Low Income Housing Tax Credits to acquire and/or rehabilitate existing tax credit properties still regulated by an extended use agreement shall:
- (1) certify that the property sales price is no more than the current debt balance secured by the property, and
  - (2) be prohibited from receiving any tax credits derived from acquisition basis.

### Comments Received:

Several commenters endorsed TCAC's effort to limit 9% credits going to re-syndicating tax credit properties. However, one comment recommended exempting Single Room



Occupancy properties (SROs) from the proposed restrictions since these properties may not be re-syndicated using tax exempt bond financing and 4 percent (4%) tax credits.

One commenter recommended disallowing a developer fee based upon acquisition costs and excluding from the sales price any debt leined against that property that (a) has been recorded in the previous ten years to (b) provide a cash payment to the owner. Another commenter suggested that TCAC require a “date down” title policy to determine the appropriate sales price, and that lien debt from related parties should be excluded from the sales price.

One commenter recommended an exception to the proposed prohibitions where (a) significant rehabilitation is needed, and (b) the project is charging extremely low rents for extremely low income populations.

One commenter opposed the new language unless this type of “rehabilitation transaction utilizing 9% tax credits is negatively influencing the award of new construction projects.” Another commenter opposed this change as “removing motivation to improve the project.”

Another commenter recommended allowing an exception to the acquisition credit prohibition to supportive housing projects and severely distressed rehabilitation projects.

A commenter sought assurances that the proposed rules would not apply to truly at-risk tax credit projects that were facing expiring regulatory agreements.

One commenter opined that the proposed rule would work against truly projects truly needing significant equity infusions to complete necessary rehabilitation work. The same commenter noted that the phrase “to acquire and/or rehabilitate” was meaningless as used, since the proposed restrictions applied to projects; acquisition features. Therefore, the phrase should read “to acquire and rehabilitate.”

#### **Response:**

Proceed with proposed change. Add exceptions for SROs and for projects within 10-years of the tax credit regulatory agreement expiration. Staff will continue to work with stakeholders to determine any other worthy exceptions to the proposed restrictions for future regulation changes.

#### **Revised Proposed Change:**

(k) Unless the proposed project is a Single Room Occupancy development or within ten (10) years of an expiring tax credit regulatory agreement, applicants for nine percent (9%) Low Income Housing Tax Credits to acquire and/or rehabilitate existing tax credit properties still regulated by an extended use agreement shall:

- (1) certify that the property sales price is no more than the current debt balance secured by the property, and
  - (2) be prohibited from receiving any tax credits derived from acquisition basis.
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## **Section 10325(c)(5)(A)**

### **Initial Proposed Change:**

- (A) Site Amenities: Site amenities must be appropriate to the tenant population served. To receive points the amenity must be in place at the time of application, except under the Balanced Communities Subsection, where the funds for the amenity must be committed and the amenity is planned to be complete when the project is placed in service.

Projects proposed in master planned communities within newly developing areas, and applying for Balanced Communities points, may describe planned amenities that will be in-place and operational within two years of the project's placed in service date. Where transit services will not be available by the placed in service date, the applicant must provide evidence that alternative transportation will be available to residents at transit rates until the local transit is operational at the level of regularity claimed in the application. The Development Team shall be held responsible under Section 10325(c)(3)(A) for the availability of amenities to the residents by the end of the two year period following project's placed in service date.

Distances must be measured using a standardized radius from the development site determined by the Committee but must not include physical barriers. No more than 15 points will be awarded in this category. Applicants must certify to the accuracy of their submissions and will be subject to negative points in the round in which an application is considered, as well as subsequent rounds, if the information submitted is found to be inaccurate. For each amenity, color photographs, a contact person and a contact telephone must be included in the application. The Committee may employ third parties to verify distances or may have staff verify them. Only one point award will be available in each of the subcategories (1-9) listed below. Amenities may include:

### **Comments Received:**

TCAC received several comments endorsing the effort to accommodate new growth areas. One commenter recommended clarifying the phrase "at transit rates" in the new language's description of alternative transportation.

One commenter opposed the change, and stated that all "features should be available at Placed in Service." Another commenter objected, arguing that allowing more time for new growth sites is unfair to "inner city" sites that must adhere to the stricter standards. Yet another commenter opposed the change and suggested that the deeper income targeting basis limit boosts proposed under the 4% credit regulations would accommodate new growth projects.

Additional commenters stated that holding development teams responsible for the arrival of amenities after project completion would be ineffective.

One commenter opined that the proposed provisions would be unworkable, and suggested instead that TCAC accept that, in master planned communities, an operational local

housing program, amenities on locally-approved maps, and alternative transit availability would suffice.

One commenter proposed pulling the change and continuing to work on the concept.

One commenter stated that TCAC should recognize the dollar value of contributed private land as a local government contribution for purposes of accessing balanced communities points.

**Response:**

This change received both supportive and opposing comments. Several thoughtful comments supported the intent, but challenged the particular change's effectiveness. TCAC staff will recommend forgoing this regulation change and conferring with stakeholders further consider additional ideas.

**Revised Proposed Change:** No change will be proposed at this time.

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**Section 10325(c)(5)(B)**

**Initial Proposed Change:**

- (B) Service Amenities: Amenities must be appropriate to the tenant population served and committed for a minimum of 10 years. Physical space for such amenities must be available when the development is placed-in-service, and the amenities must be available within 6 months of the project's placed-in-service date. To receive points in this category, programs must be of a regular, ongoing nature and provided to tenants free of charge, except for day care services. Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative. Referral services will not be eligible for points. Contracts with service providers must be provided, along with service provider experience, evidence that physical space will be provided, and a budget reflecting how the services will be paid for must be included in the application. Having a bona fide service coordinator (not the on-site manager, for example) may count for 5 points in this category, provided that the experience of the coordinator, the duties of the coordinator, and a budget to pay for the coordinator are included in the application. No more than 10 points will be awarded in this category. Amenities may include, but are not limited to:
1. High speed internet service provided in each unit (as stated above, free of charge to the tenants) 5 points
  2. After school programs of an ongoing nature for school age children 5 points
  3. Educational classes (such as ESL, computer training, etc.) but which are not the same as in 2 above. 5 points

4. Licensed child care providing 20 hours or more per week (Monday through Friday) to residents of the development 5 points
5. ~~Contracts for~~ Direct client services, such as assistance with activities of daily living, or provision of counseling services, where a contract is in place at the time of application (only for senior, SRO and Special Needs Projects) 5 points
6. Bona fide service coordinator/social worker available 5 points

### **Comments Received:**

One commenter enthusiastically supported the proposed changes.

A commenter suggested replacing “must be provided, along with” in the proposed language, with “must be provided in the application, and.” The same commenter noted that under item (B)(6), the existing word “available” remains ambiguous.

Another commenter is a nonprofit developer who also provides and guarantees services. The commenter stated that the proposed change leaves them uncertain as to the content of the required services contract, and how that description would vary from what is typically contained in their partnership agreement. Two other commenters suggested clarifying that a Memorandum of Understanding (MOU) would suffice for a services contract.

**Response:** In light of the support for these clarifying changes, TCAC staff will recommend the change with additional clarifying language as suggested by one commenter. Staff will consult with stakeholders and consider further amendments in the future regarding the adequacy of MOUs versus contracts in competitive scoring.

### **Revised Proposed Change:**

- (B) Service Amenities: Amenities must be appropriate to the tenant population served and committed for a minimum of 10 years. Physical space for such amenities must be available when the development is placed-in-service, and the amenities must be available within 6 months of the project's placed-in-service date. To receive points in this category, programs must be of a regular, ongoing nature and provided to tenants free of charge, except for day care services. Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative. Referral services will not be eligible for points. Contracts with service providers must be provided in the application, and service provider experience, evidence that physical space will be provided, and a budget reflecting how the services will be paid for must be included in the application. Having a bona fide service coordinator (not the on-site manager, for example) may count for 5 points in this category, provided that the experience of the coordinator, the duties of the coordinator, and a budget to pay for the coordinator are included in the application. No more than 10 points will be awarded in this category. Amenities may include, but are not limited to:

1. High speed internet service provided in each unit (as stated above, free of charge to the tenants) 5 points

2. After school programs of an ongoing nature for school age children 5 points
  3. Educational classes (such as ESL, computer training, etc.) but which are not the same as in 2 above. 5 points
  4. Licensed child care providing 20 hours or more per week (Monday through Friday) to residents of the development 5 points
  5. ~~Contracts for~~ Direct client services, such as assistance with activities of daily living, or provision of counseling services, where a contract is in place at the time of application (only for senior, SRO and Special Needs Projects) 5 points
  6. Bona fide service coordinator/social worker available 5 points
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## Section 10325(c)(7)

### New Proposed Change

- (7) Balanced communities. These points will not be available to projects applying under the Rural set-aside.

If a development does not request neighborhood revitalization points, if the local government is providing funds equal to at least 5% of total project costs for the project, and if it meets the other requirements of this subsection, the applicant may request points for balanced communities. For purposes of this scoring factor, land donated as part of an inclusionary housing ordinance which has been in effect for at least one year prior to the application deadline will be the equivalent of a local government providing funds. Points will be awarded, to a maximum of 9, as follows:

### Reason:

This change responds to comment urging that, for purposes of meeting the local government funding threshold, TCAC consider donated private land as it does under public funds scoring in Section 10325(c)(1)(C). TCAC believes consistency between the two scoring factors is appropriate in this matter.

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## Section 10325(c)(8)

### Initial Proposed Change:

- (8) Sustainable building methods. Maximum 8 points

A new construction or adaptive reuse project that exceeds Title 24 energy standards by at least 10%. For a rehabilitation project not subject to Title 24, that reduces energy use on a per square foot basis by 25% as calculated using a methodology approved by the California Energy Commission. (4 points).

For rehabilitation projects not subject to Title 24 requirements, use of fluorescent light fixtures for at least 75% of light fixtures or comparable energy lighting for the project's

total lighting (including community rooms and any common space) throughout the compliance period. 2 points

Use of Energy Star rated ceiling fans in all bedrooms and living rooms; or use of a whole house fan; or use of an economizer cycle on mechanically cooled HVAC systems. 2 points

Use of water-saving fixtures or flow restrictors in the kitchen (2gpm or less) and bathrooms (1.5 gpm or less). 1 point

Use of at least one High Efficiency Toilet (1.3 gpf) or dual-flush toilet per unit. 2 points

Use of material for all cabinets, countertops and shelving that is free of added formaldehyde or fully sealed on all six sides by laminates and/or a low-VOC primer or sealant (150 g/l or less). 1 point

Use of no-VOC interior paint (5 g/l or less). 1 point

Use of CRI Green-label, low-VOC carpeting and pad and low-VOC adhesives 25 g/l or less. 1 point

Use of bathroom fans in all bathrooms that exhaust to the outdoors and are equipped with a humidistat sensor or timer. 2 points

Use of formaldehyde-free insulation. 1 point

Use of at least one of the following recycled materials at the designated levels: a) cast-in-place concrete (20% flyash); b) carpet (25%); c) road base, fill or landscape amendments (30%). 1 point

Design the project to retain, infiltrate and/or treat on-site the first one-half inch of rainfall in a 24-hour period. 1 point

Include in the project specifications a Construction Indoor Air Quality Management plan that requires the following: a) protection of construction materials from water damage during construction; b) capping of ducts during construction; c) cleaning of ducts upon completion of construction; and d) for rehabilitation projects, implementation of a dust control plan that prevents particulates from migrating into occupied areas. 2 points

Project design incorporates the principles of Universal Design in at least half of the project's units by including: accessible routs of travel to the dwelling units with accessible 34" minimum clear-opening-width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances. 1 point

The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous. 1 point

To receive these points, the applicant and the project architect or mechanical engineer must certify in the application, which of the items will be included in the project's design and specifications, and further must certify at the project's placed-in-service date that the items have been included and/or that the energy efficiency standard has been met or exceeded. Projects receiving points under this category that fail to meet the requirement will be subject to negative points under Section 10325(c)(3) above.

Develop and commit to certifying the project with any one of the following programs: Leadership in Energy Design (LEED); Green Communities; or the GreenPoint Rated Multifamily Guidelines. 8 points

### **Comments Received:**

Several commenters endorsed this change.

One commenter recommended updating and adjusting various provisions within the existing menu of sustainable building features. Suggestions included upward adjustments to standards, and downward adjustments to points. In addition, the commenter suggested that formaldehyde-free insulation may now be code-required, and some practices may be difficult to verify, such as capping ducts during construction, and cleaning the ducts following construction.

One commenter recommended a clearer reference to the LEED standard to be used, and another commenter suggested adding the phrase "LEED for Homes" as the appropriate reference. Another commenter urged that we clarify that the acronym LEED stands for "Leadership in Energy & Environmental Design." Other commenters noted that the timing and cost for LEED certification could cause enforcement problems for TCAC.

A commenter also advocated awarding negative points in the event that certifications were not completed on a timely basis after project completion.

One commenter urged forgoing this change and, instead, awarding a basis limit adjustment for obtaining certification through any of the three standards.

**Response:** TCAC staff will take submitted ideas for further improvement under advisement, and recommend the proposed change with the corrected reference to LEED.

### **Revised Proposed Change:**

(8) Sustainable building methods. Maximum 8 points

A new construction or adaptive reuse project that exceeds Title 24 energy standards by at least 10%. For a rehabilitation project not subject to Title 24, that reduces energy use on a per square foot basis by 25% as calculated using a methodology approved by the California Energy Commission. (4 points).

For rehabilitation projects not subject to Title 24 requirements, use of fluorescent light fixtures for at least 75% of light fixtures or comparable energy lighting for the project's total lighting (including community rooms and any common space) throughout the compliance period. 2 points

Use of Energy Star rated ceiling fans in all bedrooms and living rooms; or use of a whole house fan; or use of an economizer cycle on mechanically cooled HVAC systems.  
2 points

Use of water-saving fixtures or flow restrictors in the kitchen (2gpm or less) and bathrooms (1.5 gpm or less).  
1 point

Use of at least one High Efficiency Toilet (1.3 gpf) or dual-flush toilet per unit.  
2 points

Use of material for all cabinets, countertops and shelving that is free of added formaldehyde or fully sealed on all six sides by laminates and/or a low-VOC primer or sealant (150 g/l or less).  
1 point

Use of no-VOC interior paint (5 g/l or less).  
1 point

Use of CRI Green-label, low-VOC carpeting and pad and low-VOC adhesives 25 g/l or less.  
1 point

Use of bathroom fans in all bathrooms that exhaust to the outdoors and are equipped with a humidistat sensor or timer.  
2 points

Use of formaldehyde-free insulation.  
1 point

Use of at least one of the following recycled materials at the designated levels: a) cast-in-place concrete (20% flyash); b) carpet (25%); c) road base, fill or landscape amendments (30%).  
1 point

Design the project to retain, infiltrate and/or treat on-site the first one-half inch of rainfall in a 24-hour period.  
1 point

Include in the project specifications a Construction Indoor Air Quality Management plan that requires the following: a) protection of construction materials from water damage during construction; b) capping of ducts during construction; c) cleaning of ducts upon completion of construction; and d) for rehabilitation projects, implementation of a dust control plan that prevents particulates from migrating into occupied areas.  
2 points

Project design incorporates the principles of Universal Design in at least half of the project's units by including: accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances.  
1 point

The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous.  
1 point

To receive these points, the applicant and the project architect or mechanical engineer must certify in the application, which of the items will be included in the project's design and specifications, and further must certify at the project's placed-in-service date that the



items have been included and/or that the energy efficiency standard has been met or exceeded. Projects receiving points under this category that fail to meet the requirement will be subject to negative points under Section 10325(c)(3) above.

Develop and commit to certifying the project with any one of the following programs: Leadership in Energy & Environmental Design (LEED for Homes); Green Communities; or the GreenPoint Rated Multifamily Guidelines. 8 points

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## **Section 10325(c)(12)**

### **Initial Proposed Change:**

#### **(12) Tie Breakers**

If multiple applications receive the same score, the following tie breakers shall be employed: first, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; second, for other than Rural set-aside applications, to fund an application for a project located in a qualified census tract or a federally designated Renewal Community, Empowerment Zone, or Enterprise Community or State Enterprise Zone that has demonstrated that it will contribute to a concerted neighborhood revitalization plan, as evidenced by a score of at least eight (8) points, or a project not located in such an area that has received nine (9) points under section 10325(c)(6) or (7) of these regulations; third, the application with the lowest ratio of requested unadjusted eligible basis to total residential project costs, excluding developer fee, total land cost, general partner/sponsor equity/loans or loans from the equity provider, ~~unless the loan is the permanent loan for the development.~~ This ratio must not have increased when the project is placed-in-service or negative points will be awarded, and the Tax Credit award may be reduced.

### **Comments Received:**

While several commenters endorsed the proposed change, additional related changes were suggested as well. Two commenters recommended that all costs treated as land costs for tax purposes should be excluded from the third tiebreaker denominator, including off-site costs, broker's and legal costs, prepaid leases, and title and escrow fees. In addition, interest rate buy-down costs should be excluded from the third tiebreaker denominator.

One commenter recommended a clarifying edit to existing language that would then read: "excluding developer fee, total land cost, and general partner/sponsor equity/loans or loans from the equity provider.

One commenter suggested using the third tiebreaker to encourage housing populations who are homeless or at-risk of homelessness.

One commenter objected to the change, stating that it discouraged such loans and contributions.

**Response:** Go forward with proposed change and take additional received ideas under advisement for future changes.

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#### **Section 10325(d)(1)**

##### **Initial Proposed Change:**

- (d) Application selection for evaluation. Following the scoring and ranking of project applications in accordance with the above criteria, subject to conditions described in these regulations, reservations of Tax Credits shall be made for those applications of highest rank in the following manner.
- (1) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside ~~(including the homeless assistance apportionment)~~, followed by the Rural set-aside (funding the RHS program apportionment first), the Small Development set-aside, the At Risk set-aside, and the Special Needs/SRO set-aside, the highest scoring applications will have Tax Credits reserved. No more than one project in a market area as determined by the Committee will be funded in the Rural set-aside during any calendar year. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315. If the last project funded in a set-aside requires more than the credits remaining in that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. Tax Credits reserved in ~~the general non-profit set-aside (but not in the non-profit homeless assistance portion of that set-aside)~~, in the small development set-aside, and in the at-risk set-aside shall count within the geographic areas in which the projects funded therein are located. Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.

**Comments Received:** None received.

**Response:** Go forward with proposed change.

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#### **Section 10325(d)(2)**

##### **Initial Proposed Change:**

- (2) Geographic Areas selection. Tax Credits remaining following reservations to all set-asides shall be reserved to projects within the geographic areas, beginning

with the geographic area having the smallest apportionment, and proceeding upward according to size in the first funding round and in reverse order in the second funding round. The funding order shall be followed by funding the highest scoring application, if any, in each region. Then, TCAC shall award the second highest scoring project in each region, if any, and continue cycling through the regions, filling each geographic area's apportionment. TCAC shall assure and assuring that each geographic area receives funding for at least one project in each funding round to the extent that by funding a that first project in a geographic area, that area will not have exceeded 125% of the amount available in that funding round for the geographic area. Following the first award within an area's apportionment, projects Projects will be funded in order of their rank so long as at least 50% of the Tax Credits to be awarded to any single project are available under the applicable Geographical Apportionment, ~~and the 125% limit for the Apportionment as a whole is not exceeded.~~ Credits allocated in excess of the Geographic Apportionments by the application of the 125% and 50% rules described above will be drawn from the second round apportionments during the first round, and from the Supplemental Set Aside during the second round. However, all Credits drawn from the Supplemental Set Aside will be deducted from the Apportionment in the subsequent round.

### **Comments Received:**

Several commenters endorsed the proposed change in the geographic funding sequence in order to permit senior-only projects throughout the state.

One commenter recommended forgoing the proposed changes to the 125% standard, and argued that the “clarifying” language altered the meaning and intent of the existing provisions. The commenter argues that the proposed change would depart from the intent of reasonably limiting the allocation a given region receives to 124 percent (125%) of its available credit. The proposed change could lead to large over-allocations that add uncertainty and harm the affected regions in subsequent rounds.

A second commenter suggested alternative clarifying language to the funding sequence that would add “. . . in each region of the ten regions. After each region has had the opportunity to fund one project, Then TCAC . . .

One commenter objected to the proposed change, arguing that funding senior-only projects throughout the state ought not to be a public policy priority.

### **Response:**

In light of the broad support, go forward with the changed funding sequence with the suggested clarifying language. The comment supporting the existing 125% language was persuasive, and staff will not recommend the original proposed amendment.

### **Revised Proposed Change:**

- (2) Geographic Areas selection. Tax Credits remaining following reservations to all set-asides shall be reserved to projects within the geographic areas, beginning with the geographic area having the smallest apportionment, and proceeding upward according to size in the first funding round and in reverse order in the

second funding round. The funding order shall be followed by funding the highest scoring application, if any, in each of the ten regions. After each region has had the opportunity to fund one project, TCAC shall award the second highest scoring project in each region, if any, and continue cycling through the regions, filling each geographic area's apportionment. TCAC shall assure and assuring that each geographic area receives funding for at least one project in each funding round to the extent that by funding a project in a geographic area, that area will not have exceeded 125% of the amount available in that funding round for the geographic area. Projects will be funded in order of their rank so long as at least 50% of the Tax Credits to be awarded to any single project are available under the applicable Geographical Apportionment, and the 125% limit for the Apportionment as a whole is not exceeded. Credits allocated in excess of the Geographic Apportionments by the application of the 125% and 50% rules described above will be drawn from the second round apportionments during the first round, and from the Supplemental Set Aside during the second round. However, all Credits drawn from the Supplemental Set Aside will be deducted from the Apportionment in the subsequent round.

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### **Section 10325(f)(3)**

#### **Initial Proposed Change:**

Substitution of such funds may be permitted only when the source of funding is similar to that of the original funding, for example, use of a bank loan to substitute for another bank loan, or public funds for other public funds. General Partner loans or developer loans must be accompanied by documented proof of funds being available at the time of application. In addition, General Partner or developer loans to the project are unique, and may not be substituted for or foregone if committed to within the application. For projects using FHA-insured debt, the submission of a multifamily accelerated processing invitation letter from the U.S. Department of Housing and Urban Development, together with the submission of a multifamily accelerated processing firm commitment application will suffice to satisfy the requirements of this enforceable financing commitment requirement:

#### **Comments Received:**

Several commenters endorsed this change.

One commenter endorsed the change, but suggested tighter language requiring that the “proof” of available funds should not include access to a line of credit, and that TCVAC should specify a CPA certification as to the general partner’s wherewithal to provide the loan.

One commenter urged TCAC to reign in the abuse without competitively penalizing all general partner loans. Another commenter stated that such a policy would jeopardize accessing permanent funding sources, such as the City of Industry financing.

**Response:** Go forward with the proposed change.

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## Section 10325(f)(6)

### Initial Proposed Change:

- (6) Sponsor characteristics. Applicants shall provide evidence that proposed project participants, as a Development Team, possess all of the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee may conduct an investigation into an applicant's background that it deems necessary, in its sole discretion, and may determine if any of the evidence provided shall disqualify the applicant from participating in the Credit programs, or if additional Development Team members need be added to appropriately perform all program requirements. The following documentation is required to be submitted at the time of application:
- (A) current financial statement(s) for the general partner(s), principal owner(s), and developer(s);
  - ~~(B) for all participants, a description of other Credit and all other affordable, multifamily rental project involvement in California or other states, on forms provided by the Committee together with a release form permitting inquiry into the status of such developments;~~
  - ~~(C)~~ (B) for each of the following participants, a copy of a contract to provide services related to the proposed project:
    - (i) Attorney(s) and or Tax Professional(s)
    - (ii) Architect
    - (iii) Property Management Agent
    - (iv) Consultant
    - (v) Market Analyst
  - ~~(D) for the applicant and all other members of the Development Team, a description of any circumstances that would require negative points to be assessed by the Committee and any defaults or foreclosures on residential rental properties, or a signed statement affirming that no such defaults or foreclosures occurred.~~

**Comments Received:** None received.

**Response:** Go forward with the proposed change.

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## Section 10325(f)(8)(F)

### New Proposed Change:

- (8) Deferred-payment financing, grants and subsidies. Applicants shall provide evidence that all deferred-payment financing, grants and subsidies shown in the application are "committed" at the time of application, except as permitted in subsection (E) and (F) below.
- (A) Evidence provided shall signify the form of the commitment, the loan, grant or subsidy amount, the length of the commitment, conditions of participation, and express authorization from the governing body, or an

official expressly authorized to act on behalf of said governing body, committing the funds, as well as the applicant's acceptance in the case of privately committed loans.

- (B) Commitments shall be final and not preliminary, and only subject to conditions within the control of the applicant, with one exception, the attainment of other financing sources including an award of Tax Credits.
- (C) Fund commitments shall be from funds within the control of the entity providing the commitment at the time of application.
- (D) Substantiating evidence of the value of local fee waivers, exemptions or land write-downs is required.
- (E) Substitution or an increase of such funds may be permitted only when the source of funding is similar to the original funding, for example, private loan to substitute for private loan, public funds for public funds. Funds may be increased only in an amount necessary to achieve project feasibility. This provision shall include projects that have already received a reservation or allocation of Tax Credits in prior years.
- (F) Funds anticipated but not yet awarded under the following programs shall be exempt from the provisions of this subsection: the Affordable Housing Program (AHP) provided pursuant to a program of the Federal Home Loan Bank; RHS Section 514, 515 or 538 programs; California Housing Finance Agency's Proposition 1A school facility fee reimbursement program; the Department of Housing and Urban Development's Supportive Housing Program (SHP); the California Department of Mental Health's ~~Supportive Housing Initiative Act~~ Mental Health Services Act Program; projects that have received a Reservation of HOME funds from the applicable Participating Jurisdiction, or to projects receiving Housing Tax Credits in 1999 and thereafter and funding under the Department of Housing and Community Development's Multifamily Housing Program.

**Reason:** This change responds to comments received, and updates an obsolete reference.

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## Section 10326(a)

### Initial Proposed Change:

- (a) General. All applications (including reapplications) requesting Federal Tax Credits under the requirements of IRC Section 42(h)(4) for buildings and land, the aggregate basis (including land) of which is financed at least fifty percent (50%) by tax-exempt bonds, shall be eligible to apply under this Section for a reservation and allocation of Federal Tax Credits. However, those projects requesting State Tax Credits will be competitively scored as described in Section 10317(h)(2). ~~The competitive scoring system used shall be that delineated in Section 10325(c)(2) through (5) and (8) through (12), except that the only tie breaker shall be the lowest requested eligible basis per bedroom. The highest scoring applications under this scoring system will be recommended for receipt of~~

State Tax Credit, without regard to any set-asides or geographic areas, provided that they meet the threshold requirements of this section.

**Comments Received:** None received.

**Response:** Go forward with the proposed change.

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## **Section 10326(g)(5)**

### **Initial Proposed Change:**

- (6) Sponsor characteristics. Applicants shall provide evidence that proposed project participants, as a Development Team, possess all of the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee may conduct an investigation into an applicant's background that it deems necessary, in its sole discretion, and may determine if any of the evidence provided shall disqualify the applicant from participating in the Credit programs, or if additional Development Team members need be added to appropriately perform all program requirements. The following documentation is required to be submitted at the time of application:
- (A) current financial statement(s) for the general partner(s), principal owner(s), and developer(s);
  - ~~(B) for all participants, a description of other Credit and all other affordable, multifamily rental project involvement in California or other states, on forms provided by the Committee together with a release form permitting inquiry into the status of such developments;~~
  - ~~(C)~~ (B) for each of the following participants, a copy of a contract to provide services related to the proposed project:
    - (i) Attorney(s) and or Tax Professional(s)
    - (ii) Architect
    - (iii) Property Management Agent
    - (iv) Consultant
    - (v) Market Analyst
  - ~~(D) for the applicant and all other members of the Development Team, a description of any circumstances that would require negative points to be assessed by the Committee and any defaults or foreclosures on residential rental properties, or a signed statement affirming that no such defaults or foreclosures occurred.~~

**Comments Received:** None received.

**Response:** Go forward with the proposed change.

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## **Section 10327(c)(2)(B)**

### **Initial Proposed Change:**

- (B) For 4% projects applying under Section 10326 of these regulations that do not apply for State Tax Credits, the maximum developer fee that may be included in project costs is the lesser of 15% of the project's eligible basis or two million five hundred thousand dollars (\$2,500,000). A cost limitation on developer fees that may be included in eligible basis, shall be as follows:
- (i) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis, or two million five hundred thousand (\$2,500,000) dollars; or
  - (ii) the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of the unadjusted eligible construction related basis and five (5%) percent of the unadjusted eligible acquisition basis, or two million five hundred thousand (\$2,500,000) dollars. A 15% developer fee on the acquisition portion will be permitted for at-risk developments meeting the requirements of section 10325(g)(5) or for other acquisition/rehabilitation projects whose hard costs per unit in rehabilitation expenditures of at least ~~\$15,000~~ \$30,000 or where the development will restrict at least 30% of its units for those with incomes no greater than 50% of area median and restrict rents concomitantly.

### **Comments Received:**

Commenters endorsed the proposed restriction as consistent with the new construction limitations, and two commenters also recommended raising the deeper affordability option to fifty percent (50%) of the units targeted to households with incomes at or below 50% of Area Median Income.

Another commenter suggested specifically excluding contractor overhead, fees, and general requirement costs from the rehabilitation figure.

One commenter endorsed the change, but recommended increasing developer fee generally, or indexing it to CPI or some other adjuster.

One commenter objected to the proposed \$30,000 standard, and suggested eliminating the increase, or reducing to \$17,500 or \$20,000 at most.

A second commenter also suggested upping the current standard to \$20,000 per unit rather than \$30,000.

**Response:** Commenters generally endorsed increasing the threshold for larger developer fees in basis. However, the extent of the increase was contested. In light of the creation of the \$15,000 threshold in 2004, some adjustment is appropriate. Go forward with the proposed change, but reduce the new proposed threshold to \$20,000 per unit, and continue to monitor the adequacy of rehabilitation work in these projects.



### **Revised Proposed Change:**

- (B) For 4% projects applying under Section 10326 of these regulations that do not apply for State Tax Credits, the maximum developer fee that may be included in project costs is the lesser of 15% of the project's eligible basis or two million five hundred thousand dollars (\$2,500,000). A cost limitation on developer fees that may be included in eligible basis, shall be as follows:
- (i) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis, or two million five hundred thousand (\$2,500,000) dollars; or
  - (ii) the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of the unadjusted eligible construction related basis and five (5%) percent of the unadjusted eligible acquisition basis, or two million five hundred thousand (\$2,500,000) dollars. A 15% developer fee on the acquisition portion will be permitted for at-risk developments meeting the requirements of section 10325(g)(5) or for other acquisition/rehabilitation projects whose hard costs per unit in rehabilitation expenditures of at least ~~\$15,000~~ \$20,000 or where the development will restrict at least 30% of its units for those with incomes no greater than 50% of area median and restrict rents concomitantly.
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### **Section 10327(c)(5)**

#### **Initial Proposed Change:**

Exceptions to limits.

- (A) Increases in the Threshold basis limits shall be permitted as follows for projects applying under Section 10325 or 10326 of these regulations. The maximum increase to the unadjusted eligible basis of a development permitted under this subsection shall not exceed ~~twenty-nine (29%)~~ thirty-four percent (34%)
- A twenty percent (20%) increase to the unadjusted eligible basis for a development that is required to pay state or federal prevailing wages;
- A seven percent (7%) increase to the unadjusted eligible basis for a new construction development where parking is required to be provided beneath the residential units (but not "tuck under" parking);
- A two percent (2%) increase to the unadjusted eligible basis where a day care center is part of the development;
- A two percent (2%) increase to the unadjusted eligible basis where 100% of the units are for special needs populations
- A five percent (5%) increase to the unadjusted eligible basis for an infill development at 60 units per acre or greater.
- (B) A further four percent (4%) increase in the Threshold Basis Limits will be permitted for projects applying under Section 10325 or Section 10326 of these regulations that either (a) exceed Title 24 standards by at least 35 percent, or (b)

include three of the following energy efficiency/resource conservation/indoor air quality items:

Exceed Title 24 standards by at least 15%.

Use tankless water heaters, a high efficiency condensing boiler (92% AFUE or greater), or a solar thermal domestic hot water pre-heating system.

Use a Minimum Efficiency Report Value (MERV) 8 or higher air-filter for HVAC systems that introduce outside air.

Irrigation system using only reclaimed water and/or captured rainwater.

Recycle at least 75% of construction and demolition waste (measured by either by weight or volume).

Install natural linoleum, natural rubber, or ceramic tile for all kitchens and bathrooms (where no VOC adhesives or backing is also used).

Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, ceramic tile, or natural linoleum in all living rooms or 50% of all common areas.

Install CRI Green Label Plus Carpet, or no carpet, in all bedrooms.

Vent kitchen range hoods to the exterior of the building in at least 80% of units.

Use at least four recycled products listed in the Construction, Flooring, or Recreation section of the California Integrated Waste Management Boards Recycle Content Products Database [www.ciwmb.ca.gov/RCP](http://www.ciwmb.ca.gov/RCP).

- (C) Additionally, for projects applying under Section 10326 of these regulations, an increase of one percent (1%) in the threshold basis limits shall be available for every 1% of the project's units that will be income and rent restricted to 50 percent (50%) of Area Median Income. In addition, -of up to 100% will be permitted, and where more than 50% of the units will be income and rent restricted to Tax Credit levels, the basis limits can be exceeded by 120% in addition to all other adjustments permitted under these regulations. In order to qualify for either of the aforementioned adjustments to the threshold basis limits, the applicant must agree to maintain the affordability period of the project for 55 years.
- (D) ~~Applications under Section 10325 shall be permitted a ten percent (10%) increase in threshold basis limit when proposing a project within a region where development costs frequently exceed the published limit. The increase shall be calculated from the threshold basis limit without adjustments. The Committee staff shall annually establish a list of regions where this increase is available, and shall base the list upon the immediate prior year's application data. Where half or more of the region's prior year's applications have threshold basis exceeding the applicable limit without adjustment, the Committee shall include that region for~~

~~the 10% limit increase. Any such boosts would be available to projects proposed within the region, including rural set-aside applicants.~~

### **Comments Received:**

One commenter endorsed the proposed changes, especially for higher-density projects.

A commenter supported the raising of the aggregate basis limit adjustment up to 34 percent.

One commenter urged that the five percent (5%) adjustment for electricity-generation be available if a common-area system would provide more than half of the anticipated common area usage.

A third commenter recommend that, in paragraph (A), the high-density boost should be raised from 5 to 10 percent (10%), and that the term “infill” should be deleted or defined. Yet another commenter urged that the high density boost be available to projects developing at 30 units or more to the acre. This same commenter recommended an adjustment for elevator-serviced properties. Another commenter also recommended a basis limit adjustment for elevator-serviced properties of two percent (2%).

One commenter argued that the high density boost should be available at different densities for different housing types. For example, a senior project’s density would be different from a family project’s density. Alternatively, the commenter suggested using bedrooms per acre, or establishing a high-rise standard.

Another commenter “strongly” supported the high density boost and the new energy efficiency option. Two commenters suggested that committing to a LEED certification should garner a 4% basis limit boost by itself.

An additional commenter also supported the high-density boost, but urged additional boosts for steel frame construction projects. This same commenter urges a 50 percent (50%) basis limit boost for 4% tax credit projects with an average affordability of 35 percent (35%) of AMI or below.

Several commenters urged TCAC to waive threshold basis limits altogether for public housing authority-sponsored projects seeking four percent (4%) credits with tax exempt bond financing. Two commenters urged providing additional adjustments for setting aside portions of projects for extremely low-income households (incomes of 35 percent of AMI or less).

One commenter urged us to revisit some of the existing materials and features boosts to assure that they add cost that merits a basis limit adjustment. Examples of concern included tankless water heaters, recycling construction waste, and providing “no carpet” in bedrooms.

One commenter recommended increasing the basis limit adjustment for parking from the current 7 percent (7%) to fourteen percent (14%).

A commenter suggested specifying steel frame construction and eliminating the units per acre language. Alternatively, they recommended specifying infill development, but reducing the required density to 50 units per acre. The same commenter recommended against the alternative of exceeding Title 24 standards by 35%, and instead recommended

establishing an additional, separate boost for such energy efficiency. One commenter recommended reducing the proposed 35%-better –than-Title 24 standard to 20% better.

**Response:** Staff found arguments regarding the limited efficacy of the proposed high density adjustment persuasive. Staff agrees that denser infill developments generally face higher costs than garden style developments. In addition, staff acknowledges stakeholders’ opinion that elevators are a good indicator of this more costly development type.

Therefore staff amends its recommended change to provide a 10 percent (10%) boost for properties where nearly all upper-floor units are serviced by an elevator. Staff specifically recommends a 95% service rate among upper-floor units in order to accommodate properties where a very small set of units are not accessible by elevator. This change would acknowledge the additional costs accompanying properties typically designed with interior unit entries serviced by elevators and interior, enclosed stairwells. This adjustment would account for intra-county cost differences such as those found in the Inland Empire, where more urbanized infill properties face greater development costs generally than do non-urban garden-style developments.

Staff also proposes a complementary increase in the aggregate permissible adjustment up to 39 percent (39%) under paragraph (A).

Under paragraph (C), staff proposes accommodating 4% tax credit projects serving extremely low-income households, such as in public housing projects, by awarding a two percent (2%) basis limit boost for each 1% of units targeted to households with incomes at or below 35% of AMI.

### **Revised Proposed Change:**

Exceptions to limits.

- (A) Increases in the Threshold basis limits shall be permitted as follows for projects applying under Section 10325 or 10326 of these regulations. The maximum increase to the unadjusted eligible basis of a development permitted under this subsection shall not exceed ~~twenty-nine (29%)~~ thirty-nine percent (39%)
- A twenty percent (20%) increase to the unadjusted eligible basis for a development that is required to pay state or federal prevailing wages;
  - A seven percent (7%) increase to the unadjusted eligible basis for a new construction development where parking is required to be provided beneath the residential units (but not “tuck under” parking);
  - A two percent (2%) increase to the unadjusted eligible basis where a day care center is part of the development;
  - A two percent (2%) increase to the unadjusted eligible basis where 100% of the units are for special needs populations
  - A ten percent (10%) increase to the unadjusted eligible basis for a development wherein at least 95% of the project’s upper floor units are serviced by an elevator.
- (B) A further four percent (4%) increase in the Threshold Basis Limits will be permitted for projects applying under Section 10325 or Section 10326 of these

regulations that either (a) exceed Title 24 standards by at least 35 percent, or (b) include three of the following energy efficiency/resource conservation/indoor air quality items:

Exceed Title 24 standards by at least 15%.

Use tankless water heaters, a high efficiency condensing boiler (92% AFUE or greater), or a solar thermal domestic hot water pre-heating system.

Use a Minimum Efficiency Report Value (MERV) 8 or higher air-filter for HVAC systems that introduce outside air.

Irrigation system using only reclaimed water and/or captured rainwater.

Recycle at least 75% of construction and demolition waste (measured by either by weight or volume).

Install natural linoleum, natural rubber, or ceramic tile for all kitchens and bathrooms (where no VOC adhesives or backing is also used).

Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, ceramic tile, or natural linoleum in all living rooms or 50% of all common areas.

Install CRI Green Label Plus Carpet, or no carpet, in all bedrooms.

Vent kitchen range hoods to the exterior of the building in at least 80% of units.

Use at least four recycled products listed in the Construction, Flooring, or Recreation section of the California Integrated Waste Management Boards Recycle Content Products Database [www.ciwmb.ca.gov/RCP](http://www.ciwmb.ca.gov/RCP).

- (C) Additionally, for projects applying under Section 10326 of these regulations, an increase of one percent (1%) in the threshold basis limits shall be available for every 1% of the project's units that will be income and rent restricted below 50 percent (50%) but above thirty-five percent (35%) of Area Median Income (AMI). An increase of two percent (2%) shall be available for every 1% of the project's units that will be restricted at or below 35% of AMI. In addition, -of up to 100% ~~will be permitted, and where more than 50% of the units will be income and rent restricted to Tax Credit levels, the basis limits can be exceeded by 120% in addition to all other adjustments permitted under these regulations. In order to qualify for either of the aforementioned adjustments to the threshold basis limits, the applicant must agree to maintain the affordability period of the project for 55 years.~~
- (D) ~~Applications under Section 10325 shall be permitted a ten percent (10%) increase in threshold basis limit when proposing a project within a region where development costs frequently exceed the published limit. The increase shall be calculated from the threshold basis limit without adjustments. The Committee staff shall annually establish a list of regions where this increase is available, and shall base the list upon the immediate prior year's application data. Where half or~~

~~more of the region's prior year's applications have threshold basis exceeding the applicable limit without adjustment, the Committee shall include that region for the 10% limit increase. Any such boosts would be available to projects proposed within the region, including rural set-aside applicants.~~

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## **Section 10327(c)(5)(E) and (F)**

### **Initial Proposed Change:**

- (E) Projects requiring seismic upgrading of existing structures, and/or projects requiring toxic or other environmental mitigation may be permitted an increase in basis limit equal to the lesser of the amount of costs associated with the seismic upgrading or environmental mitigation or 15% of the project's unadjusted eligible basis to the extent that the project architect certifies in the application to the costs associated with such work.
- (F) Projects may receive an additional increase in the basis limit for providing electricity-generating systems as follows: If on-site generation would provide 50 percent of a project's common area electrical needs, a basis limit increase of 2.5 percent (2.5%) shall be permitted. If on-site generation would additionally provide for at least 50 percent of the residential units' electrical needs, then a 5 percent (5%) basis limit increase shall be permitted. Further, the Executive Director, in his/her sole discretion, may permit a further increase in basis limits to a maximum of 5%, where distributive energy technologies such as microturbines and/or renewable energy sources such as solar will be implemented. To obtain this increase, an applicant must submit evidence of the cost of the system and the operating cost savings to be created through the use of the technology, throughout the time of the compliance period.

### **Comments Received:**

One commenter endorsed the proposed change.

One commenter stated that the applicability of the paragraph (E) and (F) adjustments to both four percent (4%) and nine percent (9%) credit applications should be more clearly stated.

Another commenter urged TCAC to increase the photovoltaic boost to "at least 10 percent."

A third commenter recommended a 2½ percent basis limit boost for systems serving less than 50% of the common area usage, and 5% for systems serving 50% or more of the common area usage.

Two commenters urged leaving the current regulation language unchanged, and permitting the costs to be documented at placed-in-service. A third commenter also urged retaining the existing language, but including a specific requirement that developers provide TCAC with a state- or locally-approved rebate program confirmation of system cost and size.

One commenter recommended further consultation before making changes in this area.

**Response:** In light of doubts raised regarding the helpfulness of this change, TCAC staff is pulling the energy generation boost change at this time. Staff will continue to work with interested parties to determine the most helpful mechanisms to defray the costs of energy-generating systems in affordable rental housing projects. No substantive change will be proposed to paragraph (F) at this time. Staff will simply propose the clarifying change to paragraph (E).

**Revised Proposed Change:**

- (E) Projects requiring seismic upgrading of existing structures, and/or projects requiring toxic or other environmental mitigation may be permitted an increase in basis limit equal to the lesser of the amount of costs associated with the seismic upgrading or environmental mitigation or 15% of the project's unadjusted eligible basis to the extent that the project architect certifies in the application to the costs associated with such work.
  - (F) Further, the Executive Director, in his/her sole discretion, may permit a further increase in basis limits to a maximum of 5%, where distributive energy technologies such as microturbines and/or renewable energy sources such as solar will be implemented. To obtain this increase, an applicant must submit evidence of the cost of the system and the operating cost savings to be created through the use of the technology, throughout the time of the compliance period.
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**Section 10327(d)(2)**

**Initial Proposed Change:**

- (d) Determination of eligible and qualified basis. Eligible and qualified basis shall be as defined by the Internal Revenue Code and these regulations. The Committee shall provide forms to assist applicants in determining basis. The Committee shall rely on certification from an independent, qualified Certified Public Accountant for determination of basis; however, the Committee retains the right to disallow any basis it determines ineligible or inappropriate.
  - (1) High Cost Area adjustment to eligible basis. Proposed projects located in a qualified census tract or difficult development area, as defined in IRC Section 42(d)(5)(c)(iii), may qualify for a thirty percent (30%) increase to eligible basis, subject to Section 42, applicable California statutes and these regulations.
  - (2) Deferred fees and costs. Deferral of project development costs shall not exceed an amount equal to seven-and-one-half percent (7.5%) of the unadjusted eligible basis of the proposed project prior to addition of the developer fee. In no case may the applicant propose deferring project development costs in excess of half (50%) of the proposed developer fee. Tax-exempt bond projects shall not be subject to this limitation.

### Comments Received:

Commenters endorsed this change to avoid unwarranted scoring manipulation.

One commenter recommended deleting the first complete sentence of paragraph (d), which the commenter characterized as obsolete and contradictory.

Three commenters objected to the proposed restriction, and urged TCAC to leave the decision to defer developer fee to the developer. One of the three commenters argued that local public funding sources occasionally require deferring more than half of the developer fee.

Two commenters asked that TCAC clarify that, while limiting the deferral of costs in the application, ultimately such costs may need to be deferred without penalty.

**Response:** In light of supportive comments received, TCAC staff will recommend the proposed change along with deleting the unnecessary noted language. In addition, staff now recommends allowing larger deferrals where they are required by other State or local public funding sources.

### Revised Proposed Change:

- (d) Determination of eligible and qualified basis. ~~Eligible and qualified basis shall be as defined by the Internal Revenue Code and these regulations.~~ The Committee shall provide forms to assist applicants in determining basis. The Committee shall rely on certification from an independent, qualified Certified Public Accountant for determination of basis; however, the Committee retains the right to disallow any basis it determines ineligible or inappropriate.
    - (1) High Cost Area adjustment to eligible basis. Proposed projects located in a qualified census tract or difficult development area, as defined in IRC Section 42(d)(5)(c)(iii), may qualify for a thirty percent (30%) increase to eligible basis, subject to Section 42, applicable California statutes and these regulations.
    - (2) Deferred fees and costs. Deferral of project development costs shall not exceed an amount equal to seven-and-one-half percent (7.5%) of the unadjusted eligible basis of the proposed project prior to addition of the developer fee. Unless expressly required by a State or local public funding source, in no case may the applicant propose deferring project development costs in excess of half (50%) of the proposed developer fee. Tax-exempt bond projects shall not be subject to this limitation.
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### Section 10327(g)(1)

#### Initial Proposed Change:

- (1) Minimum operating expenses shall include expenses of all manager units and market rate units, and must be at least equal to the ~~following~~ minimum operating expense standards published by the Committee staff annually. The published minimums shall be established based upon periodic calculations of operating



expense averages annually reported to TCAC by existing tax credit property operators. The minimums shall be displayed by region, and project type (including large family, senior, and SRO/Special Needs), and shall be calculated at the reported average or at some level discounted from the reported average. If the permanent lender(s) and equity investor are in place and present evidence to the Committee that they have agreed to lesser operating expenses, the operating expenses required by this subsection may be reduced by up to 15%. The Executive Director may, in his/her sole discretion, utilize operating expenses up to 15% less than required in this subsection for underwriting applications submitted under Section 10326 of these regulations, when the credit enhancer and the permanent lender provide evidence that they have agreed to such lesser operating expenses. These minimum operating expenses do not include property taxes, replacement reserves, depreciation or amortization expense, or the costs of any service amenities.

|                              | SRO/SPN | FAMILY  | SENIOR  | AT RISK |
|------------------------------|---------|---------|---------|---------|
| <b>High Density Projects</b> |         |         |         |         |
| 50 or Less Units             | \$3,500 | \$3,400 | \$3,000 | \$3,200 |
| 51 to 100 Units              | \$3,500 | \$3,200 | \$2,800 | \$3,000 |
| More Than 100 Units          | \$3,400 | \$3,000 | \$2,600 | \$2,800 |
| <b>Other Projects</b>        |         |         |         |         |
| 50 or Less Units             | \$3,400 | \$3,000 | \$2,600 | \$2,800 |
| 51 to 100 Units              | \$3,400 | \$2,800 | \$2,400 | \$2,600 |
| More Than 100 Units          | \$3,300 | \$2,600 | \$2,200 | \$2,400 |
| <b>Rural Projects</b>        |         |         |         |         |
| 50 or Less Units             | \$3,400 | \$2,500 | \$2,100 | \$2,300 |
| 51 to 100 Units              | \$3,400 | \$2,400 | \$2,000 | \$2,200 |
| More Than 100 Units          | \$3,300 | \$2,300 | \$1,900 | \$2,100 |

- (A) ~~High density projects. High density rural projects must comply with the high density minimums. For purposes of this subsection, "high density projects" shall be those:~~
- (i) ~~located in census tracts wherein fifteen (15) or more persons per acre reside, as determined by the most recent U.S. Census; or, projects designed primarily for families that propose twenty-five (25) or more units per acre, projects designed exclusively for seniors that propose thirty-five (35) or more units per acre, and projects designed primarily for special needs or other populations that propose thirty (30) or more units per acre.~~
- (B) ~~Rural projects. For purposes of this subsection, "rural projects" shall be projects located in rural areas as defined in H & S Code Section 50199.21.~~
- (C) ~~At risk projects that do not meet the criteria of being either family or senior projects shall use the at risk column for operating expenses.~~
- (D) ~~Special needs projects that are less than 100% special needs shall prorate the operating expense minimums, using the special needs operating expenses for the special needs units, and the other applicable operating expense minimums for the remainder of the units.~~

### **Comments Received:**

Several commenters supported the new limits to ensure fair competition.

Two commenters expressed concern that older, services intensive SRO data was being inappropriately combined with data for general population SROs and newer, more energy efficient SROs. Suggested improvements included automatic cost discounting for photovoltaic-served properties; a director's exception for larger projects, and a category for "general population SROs."

One commenter urged factoring in construction types (e.g., mid-rise with at-grade parking versus high-rise with subterranean parking). Averaging all of the various construction types could "yield very misleading operating cost data."

One commenter opined that the proposed operating expense minimums were too low and recommended using higher minimums. This would ensure quality property management and to offset the inclination of applicants to maximize the amount of net operating income available for debt service.

One commenter argued that they consistently operate below our proposed operating expense minimums and that a mechanism should be available to allow for exceptions to the established minimums.

One commenter was unclear as to whether TCAC was proposing maximum operating expenses as well as minimums, and urged that we publish the actual proposed limits.

**Response:** In light of comments received, TCAC staff will continue to propose the change which leaves in place specific exceptions allowing costs up to 15 percent below the published minimums. In addition, staff will monitor the effectiveness of the minimums over time, and remain sensitive to the variety of housing types and circumstances facing individual properties.

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### **Section 10327(g)(7)**

#### **Initial Proposed Change:**

- (7) "Cash flow after debt service," shall be limited to the higher of twenty-five percent (25%) of the anticipated annual debt service payment or eight percent (8%) of gross income, during any one of the first three years of project operation. Pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at placed in service, must demonstrate that ~~these two limits are~~ this limitation is not exceeded during the first three years of the project's operation. Otherwise, the maximum annual Federal Credit will be reduced at the time of the 8609 package is reviewed, by the amounts necessary to meet the limitations.

The reduction in maximum annual Federal Credit may not be increased subsequent to any adjustment made under this section.

**Comments Received:** None received.

**Response:** Go forward with proposed change.

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### **List of Commenters**

1. Laura Archuleta, President, and Michael Massie, Housing Development Manager, Jamboree Housing Corporation
2. Paul Biane, Chairman, and Josie Gonzales, 5<sup>th</sup> District Supervisor, County of San Bernardino
3. Douglas Bigley, President and Chief Executive Officer, Urban Hosing Communities, LLC
4. Michael Bodaken, Executive Director, National Housing Trust
5. Frank Cardone, Chief Operating Officer, Related California
6. Wah Chen, Partner, Insite Real Estate Development
7. Rebecca Clark, President, National Community Renaissance of California
8. Christopher J. Corbin, Housing Program Manager, City of Chino
9. Gregory C. DeVereaux, City Manager/Agency Executive Director, City of Ontario
10. LaShelle Dozier, Interim Executive Director, Sacramento Housing and Redevelopment Agency
11. Mamta Dhurandhar, Senior Manager, Acquisition & Development, Advanced Development and Investment, Inc.
12. David R. Edgar, Deputy City Manager, City of Fontana
13. Scott Falcone, Director of Development, Citizens Housing Corporation
14. Janet Falk, Vice President, Real Estate Development, Mercy Housing California
15. Dave Ferrier, Executive Director, Community Housing Improvement Program
16. Frank Fonseca, American Communities, LLC
17. Carole Galante, President, and Lydia Tan, Executive Vice President, BRIDGE Housing Corporation
18. Barry Getzel, Director of Project Development, Wakeland Housing and Development Corporation
19. Craig A. Gillett, Co-Executive Director, LifeSteps
20. Christine Gouig, Executive Director, Housing Authority of the County of Alameda
21. Elva Grant, Executive Director, Housing Alternatives, Inc.
22. Ginger Hitzke, Manager, Community Collective Development Partners
23. Jonathan Hunter, Managing Director, Western Region, Corporation for Supportive Housing
24. Mike Kelly, Pacific West Communities
25. Josh LaBarge, Southern California Housing Resource and Development
26. Robert Lawlor, Senior Project Manager, St. Anton Partners

27. Sylvia Martinez, Wakeland Housing Corporation
28. Ajit Mithaiwala, Chief Administrator, Advanced Development and Investment, Inc.
29. Rudolf C. Montiel, Executive Director, Housing Authority of the City of Los Angeles
30. Arjun Nagarkatti, Executive Vice President, AMCAL Multi-Housing, Inc.
31. Andrea Papanastassiou, Director of Real Estate Development, Eden Housing, Inc.
32. Jeanne Peterson, Principal, Reznick Group
33. Ben Phillips, Regional Director/Vice President, Southern California, Mercy Housing California
34. Holly Phillips, Housing Director, Los Angeles Community Design Center
35. Joe Rios
36. Caleb Roope, President/CEO, Pacific West Communities
37. David Rosen, David Paul Rosen and Associates
38. Joel Rubenzahl, Community Economics
39. Patrick Sabelhaus, Secretary, California Council for Affordable Housing
40. John Seymour, Director, National CORE
41. Ruth Schwartz, Executive Director, Shelter Partnership
42. Doug Shoemaker, Mayor's Office of Housing, City and County of San Francisco
43. Tony Silva and Alex Valdez, I-5 Social Services Corporation, Inc.
44. Jim Silverwood, President, Affirmed Housing Group
45. Tim Soule, Project Manager, Meta Housing Corporation
46. Rob Steel, Redevelopment/Economic Development Director, City of Rialto
47. Nehemiah Stone, Director of DSM Implementation, KEMA Services, Inc.
48. Suzanne Vice, Director, Northern California, National Affordable Housing Trust
49. Acquanetta Warren, City Councilmember, City of Fontana
50. Walker Wells, Ted Bardacke, Pamela Cepe, Global Green USA
51. Kathy Weremiuk, Housing Finance Officer, California Housing Finance Agency
52. Rob Wiener, Executive Director, California Coalition for Rural Housing
53. Mark Wilson, Senior Project Manager, Peoples' Self-Help Housing Corporation